

Senate Engrossed House Bill

FILED

**MICHELE REAGAN
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

**CHAPTER 319
HOUSE BILL 2191**

AN ACT

AMENDING SECTION 41-1518, ARIZONA REVISED STATUTES; RELATING TO CAPITAL
INVESTMENT TAX INCENTIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1518, Arizona Revised Statutes, is amended to
3 read:

4 41-1518. Capital investment incentives; evaluation;
5 certification; definitions

6 A. The Arizona commerce authority shall receive and evaluate
7 applications that are submitted by qualified investors to receive a tax
8 credit pursuant to section 43-1074.02 for qualified investments made in a
9 qualified small business and SHALL certify to the department of revenue
10 the names, amounts and other relevant information relating to the
11 applicants.

12 B. To be eligible for a tax credit pursuant to this section and
13 section 43-1074.02, a qualified investor shall file an application with
14 the authority within ninety days after making a qualified investment. The
15 application, on a form prescribed by the authority, shall include:

16 1. The name, address and federal income tax identification number
17 of the applicant.

18 2. The name and federal employer identification number of the
19 qualified small business that received a qualified investment made by the
20 applicant.

21 3. The date the qualified investment was made.

22 4. Any additional information that the authority requires.

23 C. As part of the application, the applicant and the qualified
24 small business that receives the investment shall each provide written
25 authorization pursuant to section 42-2003 designating the authority as
26 eligible to receive tax information from the department of revenue for the
27 purpose of determining if any misrepresentations exist on the application.
28 The authorization shall limit disclosure to income tax information for the
29 latest two years for which returns were filed with the department of
30 revenue preceding the date the application is filed and for all tax years
31 through the year in which the investment was made for which a return was
32 not filed as of the date of the application. The applicant shall also
33 provide in the written authorization income tax information for all tax
34 years in which the applicant could claim or carry forward the credit
35 pursuant to this section, but limited to the tax years in which the
36 applicant actually claims a credit or carries forward a credit on a return
37 filed with the department of revenue. An applicant who has an individual
38 ownership interest as a co-owner of a business who may be entitled to a
39 pro rata share of the credit pursuant to section 43-1074.02, subsection E
40 shall provide a written authorization with content similar to the
41 authorization, and in the same manner as, any other applicant is required
42 to provide.

43 D. The authority shall review and make a determination with respect
44 to each application within ninety days after receiving the application.
45 The authority may request additional information from the applicant in

1 order to make an informed decision regarding the eligibility of the
2 qualified investor or qualified small business.

3 E. Subject to subsection F of this section, the authority shall
4 authorize tax credits for each qualified investor who makes a qualified
5 investment in a qualified small business. The amount of the credit shall
6 be:

7 1. If the qualified investment is made in a qualified small
8 business that maintains its principal place of business in a rural county
9 of this state or is a bioscience enterprise, twelve ~~per cent~~ PERCENT of
10 the amount of the investment per year for the first and second taxable
11 years after the investment is made and eleven ~~per cent~~ PERCENT of the
12 amount of the investment for the third taxable year after the year in
13 which the investment is made.

14 2. If the qualified investment is made in a qualified small
15 business other than a business described in paragraph 1 of this
16 subsection, ten ~~per cent~~ PERCENT of the amount of the investment for each
17 of the three taxable years after the year in which the investment is made.

18 F. The authority shall not authorize tax credits under this section
19 after June 30, 2021. THROUGH JUNE 30, 2017, the authority shall not
20 certify tax credits under this section exceeding twenty million dollars.
21 FROM AND AFTER JUNE 30, 2017 THROUGH JUNE 30, 2021, THE AUTHORITY MAY
22 CERTIFY ADDITIONAL TAX CREDITS UNDER THIS SECTION NOT EXCEEDING TWO
23 MILLION FIVE HUNDRED THOUSAND DOLLARS EACH FISCAL YEAR, PLUS ANY UNUSED
24 CREDIT CAPACITY, WHICH CARRIES OVER FROM THE PRECEDING FISCAL YEAR OR
25 YEARS. Tax credits that expire after certification or that are otherwise
26 not timely used by the qualified investor for whom they were originally
27 authorized shall ALSO be included in the ~~twenty million~~ APPLICABLE dollar
28 ~~limitation~~ LIMIT. If qualifying applications exceed ~~twenty million~~
29 ~~dollars~~ THE DOLLAR LIMIT, the authority shall authorize credits in the
30 order of the date and time that the applications are received by the
31 authority, as evidenced by the time and date stamped on the application
32 when received by the authority. All applications shall be filed on a form
33 and in the manner prescribed by the Arizona commerce authority. If an
34 application is received that, if authorized, would require the authority
35 to exceed the ~~twenty million~~ APPLICABLE dollar limit, the authority shall
36 only grant the applicant the remaining amount of tax credits that would
37 not exceed the ~~twenty million~~ dollar limit. After the authority
38 authorizes ~~twenty million dollars in~~ THE ALLOWABLE AMOUNT OF tax credits,
39 the authority shall deny any subsequent applications that are received.
40 The authority shall certify to the qualified investor and to the
41 department of revenue the amount of the tax credit that is authorized for
42 purposes of section 43-1074.02 for each taxable year described in
43 subsection E of this section.

44 G. The total of all qualified investments in any calendar year by a
45 qualified investor and its affiliates in qualified small businesses that

1 are eligible for a tax credit pursuant to this section and section 43-
2 1074.02 shall not exceed five hundred thousand dollars. The maximum
3 amount of qualified investments in a single qualified small business for
4 which the authority may authorize tax credits under this section shall not
5 exceed an aggregate of two million dollars in investments for all taxable
6 years. If applications for tax credits are received for investments that
7 exceed the limits prescribed by this subsection for any qualified small
8 business, the authority shall authorize credits in the order of the date
9 and time that the applications are received by the authority. If an
10 application is received that, if authorized, would require the authority
11 to authorize tax credits for any investment in a qualified small business
12 that would cause the total qualified investments in the business to exceed
13 the limits prescribed by this subsection, the authority shall only grant
14 the applicant the remaining amount of tax credits that would not exceed
15 the limits prescribed by this subsection.

16 H. The qualified investor shall file a return claiming the tax
17 credit with the department of revenue for application against income tax
18 pursuant to section 43-1074.02 by the due date of the return, including
19 extensions, for the tax year in which the credit is available. If the
20 qualified investor fails to timely file a return claiming the credit for a
21 taxable year, the credit expires for that taxable year and there shall be
22 no carryforward of the expired credit. If a qualified investor includes
23 co-owners of a business who qualify for individual pro rata shares of the
24 credit pursuant to section 43-1074.02, subsection E, each individual owner
25 shall file a return claiming the tax credit with the department of revenue
26 by the due date of the return, including extensions, for the tax year in
27 which the credit is available. If an individual co-owner fails to timely
28 file a return claiming the credit for a taxable year, the credit expires
29 for that taxable year and there shall be no carryforward of the expired
30 credit. Credits that expire or that otherwise are not timely used by the
31 qualified investor or by the individual co-owner of a business for whom
32 the credits were originally authorized shall not be reissued.

33 I. On receiving an application for a tax credit from a qualified
34 investor, or a written request for certification as a qualified small
35 business from a corporation, limited liability company, partnership or
36 other business entity, the authority shall determine whether the
37 corporation, limited liability company, partnership or other business
38 entity that is named in the application or written request is a qualified
39 small business. The authority shall determine if the business is a
40 bioscience enterprise and if the business maintains its principal place of
41 business in a rural county in this state. After determining the
42 qualifications, the authority shall certify the qualified small business
43 as being eligible to receive qualified investments for purposes of this
44 section. The certification is valid for one year, but the authority may
45 revoke the certification at any time or refuse to renew the certification

1 if the business fails to maintain the required qualifications. If a
2 qualified small business fails to maintain the qualifications, the
3 business shall notify the authority within five business days ~~of~~ AFTER
4 failing to meet the qualifications. The authority shall revoke the
5 certification of the business and may assess a penalty against the
6 business entity equal to the amount of the tax credits authorized after
7 the business failed to meet the qualifications. The penalty shall be
8 deposited into the state general fund. If the certification is revoked or
9 expires, subsequent investments in the business do not qualify for a tax
10 credit pursuant to this section and section 43-1074.02. All tax credits
11 that are issued before any expiration or revocation of the certification
12 shall remain valid. Any application for a tax credit shall not be denied
13 on the basis of the expiration or revocation of the certification if the
14 investment was made before the date of the expiration or revocation.

15 J. The authority shall provide to the department of revenue
16 necessary information required to administer this section and section
17 43-1074.02. If the authority subsequently discovers that an applicant who
18 received a tax credit misrepresented information on the application, the
19 authority shall immediately notify the department of revenue and provide
20 the department of revenue all information that relates to that applicant.
21 If the department of revenue determines that there has been a
22 misrepresentation on the application, the department of revenue shall deny
23 the credit if the misrepresentation relates to whether the applicant was a
24 qualified investor or made a qualified investment. If the
25 misrepresentation relates to whether the investment was made to:

26 1. A qualified small business, the department of revenue shall deny
27 the credit only if the applicant knew or should have known at any time
28 before the certification that the representation was false.

29 2. A bioscience enterprise or a business that maintains its
30 principal place of business in a rural county in this state, the
31 department of revenue shall decrease the amount of the credit that would
32 have been allowed under subsection E, paragraph 1 of this section to the
33 amount allowed under subsection E, paragraph 2 of this section only if the
34 applicant knew or should have known at any time before the certification
35 that the representation was false.

36 K. For the purposes of this section:

37 1. "Affiliate" means any person or entity that controls, that is
38 controlled by or that is under common control with another person or
39 entity. For the purposes of this paragraph, "control" means the power to
40 determine the policies of an entity whether through ownership of voting
41 securities, by contract or otherwise.

42 2. "Asset" means any owned property that has value, including
43 financial assets and physical assets. Intellectual property shall not be
44 included when determining total assets.

1 3. "Bioscience enterprise" means a business whose activity is
2 related to bioscience as determined by the authority or any corporation,
3 partnership, limited liability company or other business entity that is
4 primarily engaged in a business that conducts research, development,
5 ~~manufacture~~ MANUFACTURING, marketing, ~~sale~~ SALES and licensing of
6 products, services and solutions relating to either of the following:

7 (a) Medical, pharmaceutical, nutraceutical, bioengineering,
8 biomechanical, bioinformatics or other life-science based applications.

9 (b) Applications of modern biological, bioengineering,
10 biomechanical or bioinformatics technologies in the fields of human, plant
11 or animal health, agriculture, defense, homeland security or the
12 environment.

13 4. "Qualified investment" means an investment in an equity security
14 that meets all of the following requirements:

15 (a) The equity security shall be common stock, preferred stock, an
16 interest in a partnership or limited liability company, a security that is
17 convertible into an equity security or any other equity security as
18 determined by the authority.

19 (b) The investment shall be at least twenty-five thousand dollars.

20 (c) The qualified investor and its affiliates do not hold, of
21 record or beneficially, immediately before making an investment, equity
22 securities possessing more than thirty ~~per cent~~ PERCENT of the total
23 voting power of all equity securities of the qualified small business.

24 5. "Qualified investor" means an individual, limited liability
25 company, partnership, S corporation as defined in section 1361 of the
26 internal revenue code or other business entity that makes a qualified
27 investment in a qualified small business. Qualified investor does not
28 mean a corporation that is subject to tax under title 43, chapter 11.

29 6. "Qualified small business" means a corporation, limited
30 liability company, partnership or other business entity that:

31 (a) Maintains at least a portion of its operations at an office or
32 manufacturing or research facility located in this state.

33 (b) Has at least two principal full-time equivalent employees who
34 are residents in this state. For the purposes of this subdivision,
35 "principal" means a person whose sole responsibility is not
36 administrative.

37 (c) Does not engage in any activities that involve human cloning or
38 embryonic stem cell research.

39 (d) Has total assets not exceeding two million dollars through
40 December 31, 2011 or ten million dollars beginning from and after December
41 31, 2011, excluding any investment made under this section.

42 (e) Has not exceeded the ~~limitation~~ LIMIT on qualified investments
43 prescribed by subsection G of this section.

1 (f) Does not have a principal business involving activities
2 excluded by the authority. The authority shall provide a list of excluded
3 businesses to any person on request.

4 7. "Rural county" means a county that has a population of seven
5 hundred fifty thousand or fewer persons.

APPROVED BY THE GOVERNOR MAY 22, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2017.

Passed the House February 21, 20 17

Passed the Senate May 8, 20 17

by the following vote: 58 Ayes,

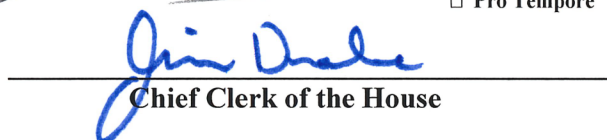
by the following vote: 21 Ayes,

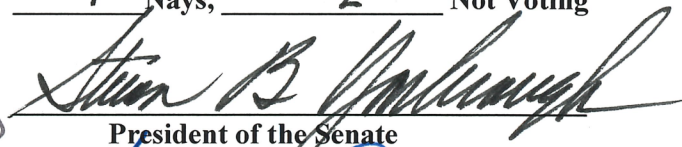
0 Nays, 2 Not Voting

7 Nays, 2 Not Voting


Speaker of the House

☐ Pro Tempore


Chief Clerk of the House


President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20 _____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20 _____

at _____ o'clock _____ M.

Secretary of State

H.B. 2191

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 10, 2017,

by the following vote: 35 Ayes,

20 Nays, 5 Not Voting

Mark R. Beggs
Speaker of the House
Pro Tempore

Jim Anderson
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of May, 2017,

at 1:33 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 22nd day of

May, 2017,

at 4:33 o'clock P. M.

[Signature]
Governor of Arizona

H.B. 2191

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of May, 2017,

at 6:34 o'clock P M.

Michelle Reagan
Secretary of State